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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,151	01/13/2004	Miguel Edmundo Gasca JR.	AUS920030773US1	3342
50170 7590 11/15/2007 IBM CORP. (WIP) c/o WALDER INTELLECTUAL PROPERTY LAW, P.C. P.O. BOX 832745 RICHARDSON, TX 75083			EXAMINER BAROT, BHARAT	
			ART UNIT 2155	PAPER NUMBER
			MAIL DATE 11/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/756,151

Applicant(s)

GASCA ET AL.

Examiner

Bharat N. Barot

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/13/2004</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. Claims 1-28 are presented for examination.

**Claim Rejections - 35 USC § 102(b)**

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Erickson et al (U.S. Patent No. 5,987,021). Erickson's patent meets all the limitations for claims 1-28 recited in the claimed invention.

4. As to claim 1, Erickson et al teach a method of allocating computing resources (see abstract), comprising: receiving requests for services from a plurality of customers; responding to the requests for services, utilizing a shared infrastructure; and configuring the shared infrastructure, based on stored customer information (column 2 lines 17-52; and column 2 line 66 to column 3 line 23).

5. As to claims 2-4, Erickson et al teach that a) creating a provisioning request (non-queued), corresponding to one of the customers; and transmitting the provisioning request; the configuring is carried out according to the provisioning request b) forming a group of provisioning requests (queued); and including in the group provisioning requests corresponding to two or more of the customers; the configuring is carried out according to the group of provisioning requests c) configuring according to the group of provisioning requests, before configuring according to other provisioning requests that are not included in the group (figures 1 and 3; column 3 lines 24-57; column 4 line 35 to column 5 line 44; and column 6 lines 35-53).

6. As to claims 5-6, Erickson et al teach that the configuring based on performance data concerning the shared infrastructure and predictions concerning utilization of the shared infrastructure (column 4 lines 3-34; and column 6 line 54 to column 7 line 3).

7. As to claim 7, Erickson et al teach that the assigning a priority, based on categories of the stored customer information, chosen from: terms of a service level agreement; actual violations of the terms; penalties for violations of the terms; sensitivity to violations of the terms; and revenue attributed to one of the customers (column 5 line 45 to column 6 line 34; and column 7 line 4 to column 9 line 25).

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8. As to claims 8-11, claims 8-11 do not teach or define any new limitations than above claims 1-7; therefore, they are also rejected for the same reasons set forth to rejecting claims 1-7 above.

9. As to claims 12-14, Erickson et al teach that the assigning a priority further comprises: utilizing stored service level agreement information; and placing the provisioning request in a queue, according to the priority (figure 3; and column 5 line 45 to column 6 line 53), wherein the assigning a priority further comprises: utilizing a range of scores, having a high - priority end; and assigning a score at the high - priority end of said range of scores, if: there is a high probability of service level agreement violation; or there is a high cost of service level agreement violation; or both (column 4 lines 3-34; and column 7 line 4 to column 9 line 25).

10. As to claims 15-28, they are also rejected for the same reasons set forth to rejecting claims 8-14 above, since claims 15-28 are merely an apparatus for the method of operations defined in the method claims 8-14.

#### **Additional Reference**

11. The examiner as of general interest cites the following reference.

a. Gonda et al, U.S. Patent No. 6,662,221.

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**Contact Information**

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Bharat Barot** whose Telephone Number is **(571) 272-3979**. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. Most facsimile-transmitted patent application related correspondence is required to be sent to the Central FAX Number **(571) 273-8300**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Saleh Najjar**, can be reached at **(571) 272-4006**.

*Bharat Barot*  
BHARAT BAROT  
PRIMARY EXAMINER

Patent Examiner Bharat Barot

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November 06, 2007